

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

OLIVIA Y., et al)	
)	
Plaintiffs)	
)	
v.)	CIVIL ACTION NO. 3:04cv251 TSL-FKB
)	
PHIL BRYANT, as Governor of the)	
State of Mississippi, <i>et al.</i> ,)	
)	
Defendants)	

**DEFENDANTS' REPLY IN SUPPORT OF
MOTION FOR APPROVAL
OF CONTENTION DISCOVERY
RELATED TO RULE 60(b) MOTION**

The Defendants agree that reciprocal contention discovery on behalf of the Defendants impacts the discovery schedule set forth in Magistrate Keith Ball's August 27, 2018 Order. *See* Plaintiffs' Response To Defendants' Motion For Approval of Contention Discovery Related To Rule 60(b) Motion. [Dkt. No. 799].

The amended discovery schedule proposed by the Plaintiffs, however, is inadequate and unreasonable because (1) it does not establish a deadline for Plaintiffs' response to the Defendants' Rule 60(b) contention discovery and (2) the Defendants are not required under the Federal Rules of Civil Procedure to complete all deposition discovery before the Plaintiffs take any depositions. *Id.*

This Plaintiffs' scheduling strategy is undoubtedly beneficial to the Plaintiffs, but it is not required by the sequence of discovery provisions in Rule 26(d)(A) and (B) of the Federal Rules of Civil Procedures unless the Court orders such a sequence "for the parties' and the witnesses' convenience and in the interest of justice." Fed. R. Civ. P. Rule 26(d)(A) and (B) .

The Plaintiffs' proposal meets neither test. It is not for the convenience of the parties and the witnesses because all relevant witnesses reside in Mississippi and it is not in the interest of justice because among other reasons it eliminates the Defendants' flexibility to adjust their deposition strategy in light of deposition testimony that will be forthcoming.

The Defendants, therefore, recommend the following amended schedule related to the Rule 60(b) Motion:

1. The Defendants' proposed contention discovery (the "Defendants' Contention Discovery"), [Dkt. No. 787-1], shall be deemed served on the Plaintiffs on September 17, 2018.

2. The Defendants shall respond to the Plaintiffs' First and Second Request For Production of Documents and First Set of Interrogatories (the "Plaintiffs' 60(b) Discovery") as previously required on September 24, 2018.

3. The Defendants shall produce documents in response to the Plaintiffs' 60(b) Discovery as previously required on October 8, 2018.

4. The Plaintiffs shall respond to the Defendants' Contention Discovery on October 17, 2018 and shall produce documents on October 29, 2018.

5. The parties may conduct discovery depositions of individuals identified in response to the Plaintiffs' 60(b) Discovery and the Defendants' Contention Discovery during the period from November 12, 2018 to November 23, 2018.

6. All discovery will be completed by November 23, 2018.

7. The Plaintiffs may file a supplemental response in opposition to the 60(b) Motion on December 17, 2018.

8. The Defendants may file a reply in support of the 60(b) Motion on January 16, 2019.

The Defendants' recommended discovery schedule will complete supplemental briefing on January 16, 2019, which is the same day the briefing would have been due under Magistrate Ball's August 27, 2018 Order. [Dkt. No. 783].

For the reasons set forth in this Reply, the Defendants request that an amended scheduling order be entered incorporating the schedule set forth above.

RESPECTFULLY SUBMITTED, this the 13th day of September, 2018.

PHIL BRYANT, as Governor of the State of Mississippi; JESS H. DICKINSON, as Commissioner, Mississippi Department of Child Protection Services; and TRACY MALONE, as Deputy Commissioner of Child Welfare, Mississippi Department of Child Protection Services

By: /s/ James L. Jones

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CERTIFICATE OF SERVICE

I hereby certify that I have this day electronically the foregoing document with the Clerk of Court using the ECF system which sent notification of such filing to the following:

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SO CERTIFIED, this the 13th day of September, 2018.

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